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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12020-mg

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In the Matter of:

RESIDENTIAL CAPITAL, LLC, et al.,

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

May 10, 2016

2:05 PM

B E F O R E:

HON. MARTIN GLENN

U.S. BANKRUPTCY JUDGE

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Case Management and Scheduling Conference Regarding the Rode  
Claims Objection Matters

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RESIDENTIAL CAPITAL, LLC, et al.

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1 P R O C E E D I N G S

2 THE COURT: All right. This is Judge Glenn. We're on  
3 the record in Residential Capital, number 12-12020. This is a  
4 case management conference in regard to the ResCap Borrower  
5 Claims Trust's objection to claims numbers 5610 and 5 -- 6512  
6 (sic) filed by Richard D. Rode.

7 May I have the appearances first for the Trust?

8 MS. RICHARDS: Good afternoon, Your Honor. Erica  
9 Richards with Morrison & Foerster for the ResCap Borrower  
10 Claims Trust.

11 THE COURT: Anybody else for the Trust?

12 MR. WISHNEW: Your Honor, good afternoon. Jordan  
13 Wishnew, Morrison & Foerster, for the ResCap Borrower Claims  
14 Trust. Ms. Richards will be speaking.

15 THE COURT: All right. And for Mr. Rode?

16 MS. NORA: Wendy Alison Nora, Your Honor. And Mr.  
17 Rode is on the phone.

18 THE COURT: All right. All right. In the last case  
19 management and scheduling order, which was dated March 11th,  
20 2016, it provided that all fact discovery should be completed  
21 no later than February 16th.

22 Ms. Richards, is all fact discovery completed?

23 MS. RICHARDS: Yes, Your Honor.

24 THE COURT: Ms. Nora?

25 MS. NORA: To the extent possible, Your Honor, yes.

1 THE COURT: I don't understand what "to the extent  
2 possible" means. There was a deadline. Is all fact discovery  
3 completed?

4 MS. NORA: We would like more time to discover facts  
5 that emanate from facts that were discovered by the discovery  
6 had so far.

7 THE COURT: All right. The case management order, in  
8 paragraph 7, provided that: "This order may not be modified or  
9 the dates here extended except by further order of this Court  
10 for good cause shown. Any application to modify or extend any  
11 deadline established by this order shall be made in a written  
12 application no less than five days prior to the expiration of  
13 the date sought to be extended." No such application was made.

14 Ms. Nora's request to extend the time for fact  
15 discovery is denied.

16 All right. Ms. Richards, is all expert discovery  
17 completed?

18 MS. RICHARDS: Yes, Your Honor, it is.

19 THE COURT: Ms. Nora, is all expert discovery  
20 completed?

21 MS. NORA: Yes, Your Honor.

22 THE COURT: All right. What remains is for a joint  
23 pre-trial conference order to be prepared, date of final  
24 pre-trial conference, and for trial.

25 Ms. Richards, how many witnesses do you anticipate

1 having at trial?

2 MS. RICHARDS: Your Honor, we only expect to call one,  
3 Sara Lathrop.

4 THE COURT: Any experts?

5 MS. RICHARDS: No.

6 THE COURT: All right. Ms. Nora, how many witnesses  
7 do you anticipate?

8 MS. NORA: Your Honor, I would expect that we would  
9 have at least five.

10 THE COURT: And how many of those five witnesses are  
11 experts?

12 MS. NORA: We have the expert testimony of Bill  
13 Paatalo that we would like to introduce. We are concerned  
14 about the brevity of the expert report of Bob Adams because he  
15 was on his tax deadline, but we might be calling Bob Adams.  
16 But then with respect to the other fact witnesses, Jeffrey  
17 Uzick, as to the attorneys' fees that were incurred as a result  
18 of the breach, Mr. Rode -- D. Rode, his wife, Larry Wickstrom,  
19 who calculated the values of the RALI trust, and there might be  
20 some others from the -- we had quite a few listed. I haven't  
21 decided yet --

22 THE COURT: Okay.

23 MS. NORA: -- what we can afford in terms of who we  
24 might call.

25 THE COURT: All right. I'm going to set a deadline

1 for submission of the joint pre-trial conference order for June  
2 17th, 2016.

3 I'm just making some notes, so hold on.

4 All right. You've been involved, Ms. Nora, in  
5 preparing the joint pre-trial conference order, so you know the  
6 format that it has to take.

7 So again, 5 p.m. June 17th is the deadline for the  
8 joint pre-trial conference order. The final pre-trial  
9 conference will be held on June 22nd, 2016. Just let me look  
10 at my calendar.

11 (Pause)

12 THE COURT: All right. June 22nd at 10 a.m.

13 Ms. Nora, I'll permit you to appear by telephone.

14 MS. NORA: Thank you, Your Honor.

15 THE COURT: And Ms. Richards, you and Mr. Wishnew, if  
16 you wish, we can do the whole thing by telephone.

17 MS. RICHARDS: Thank you, Your Honor.

18 THE COURT: And I would ask the Trust counsel to  
19 arrange the call-in information for it.

20 Ms. Nora, how long do you anticipate you're going to  
21 require for trial?

22 MS. NORA: I believe two days, Your Honor, maybe  
23 three.

24 THE COURT: Ms. Richards?

25 MS. RICHARDS: Your Honor, we think we'll need perhaps

1 four hours or --

2 THE COURT: Okay.

3 MS. RICHARDS: -- about that time.

4 THE COURT: Let me ask are there any depositions that  
5 either side intends to offer?

6 MS. RICHARDS: No, Your Honor.

7 MS. NORA: No, Your Honor.

8 THE COURT: Okay. All right. I'm going to set the  
9 trial. I would have liked to have done it earlier but because  
10 of my court schedule, I'm going to set the trial for August  
11 15th and -- August 15, 16, 17, and 18.

12 MS. NORA: Your Honor, may I have just a moment to  
13 check something that is a tentative against that schedule?

14 THE COURT: Yes, please. Go ahead.

15 MS. NORA: Thank you.

16 (Pause)

17 MS. NORA: That's open for me, Your Honor.

18 THE COURT: Okay. So it was those four days, April  
19 (sic) 16th, 17 -- excuse me, August 15th, 16, 17, and 18,  
20 beginning at 9 a.m. each day.

21 At the final pre-trial conference on June 22, we'll  
22 discuss the dates for submitting exhibits and trial briefs so  
23 there's enough time between the joint pre-trial -- between the  
24 final pre-trial conference and the actual trial date.  
25 Generally, depending on complexity, I either require materials



1 one or two weeks in advance of trial, though we have --  
2 there'll be plenty of time to do that then.

3 Okay. I'm making a note again.

4 All right. Anything else either side wants to raise  
5 today?

6 MS. RICHARDS: Your Honor, the Claims Trust would also  
7 like the opportunity to file the motions in limine. It's  
8 actually, again, something we can take up at the pre-trial  
9 conference.

10 THE COURT: All right. Ms. Nora, anything else you  
11 want to raise?

12 MS. NORA: No, Your Honor.

13 THE COURT: All right. I'm going to make a note again  
14 that we can discuss motions in limine at the pre-trial. For  
15 both sides, you'll tell me what, if any, motions in limine you  
16 want to make. I anticipate that I'll probably give you one or  
17 two weeks to get them filed and a week or so for responses. I  
18 want to make sure -- I always try, with motions in limine, to  
19 make sure that I have them well in advance so that I can rule  
20 on them so everybody knows exactly what to anticipate and what  
21 they have to do at trial. But we can discuss them at the June  
22 22nd final pre-trial conference.

23 Mr. Wishnew, is there anything else for today?

24 MS. RICHARDS: Nothing further, Your Honor.

25 THE COURT: Ms. Nora, anything else?

1 MS. NORA: Your Honor?

2 THE COURT: Anything else?

3 MS. NORA: Yes. For clarification, did I understand  
4 the Court to say that motions in limine should be filed two  
5 weeks before the final pre-trial conference?

6 THE COURT: No, no, no. That wasn't what I -- you  
7 misunderstood. We'll discuss at the final pre-trial conference  
8 a deadline for motions in limine. I'll probably give you two  
9 weeks after the final pre-trial conference to file them, okay?  
10 It's not due before the final pre-trial conference.

11 MS. NORA: And that the Court would be making a ruling  
12 by a telephone hearing or the morning of the August 15th at the  
13 evidentiary hearing?

14 THE COURT: I usually try, if possible, Ms. Nora, to  
15 decide motions in limine in advance of trial so that both sides  
16 can anticipate what evidence they're going to put in. So I  
17 don't think I've ever -- well, maybe I shouldn't say ever, but  
18 I try not to just decide them at the start of trial if they  
19 would have an impact on how you present your case.

20 So in all likelihood, Ms. Nora, with a final pre-trial  
21 conference on June 22nd, I probably will require any motions in  
22 limine to be filed in early July and give each side an  
23 opportunity to respond to those. And I would make sure that --  
24 my goal would be to have decisions on motions in limine at  
25 least a week before the trial, if not longer.

1 MS. NORA: Okay. And that would be in advance of the  
2 exhibits being submitted if the motions in limine preclude  
3 certain exhibits, I take it?

4 THE COURT: I can't guarantee. It depends how  
5 complicated the motions are and how much I've got on my  
6 calendar. I try to make sure that everybody can understand  
7 what issues are going to be tried.

8 I just say, as a caution, Ms. Nora, from prior  
9 experience, that the issues for trial are those established by  
10 the prior decision of the Court, and that in one prior  
11 instance, with another client of yours, the exhibits and  
12 witness statements you submitted attempted to bring back into  
13 the case issues that had already been decided. That's not  
14 going to happen.

15 So the issues that are going to be tried -- and they  
16 need to be identified in the joint pre-trial conference  
17 order -- are those issues that remain based on the Court's  
18 prior decision regarding the claims. But within that,  
19 if -- part of the problem, Ms. Nora and Ms. Richards, sometimes  
20 the motions in limine are directed at the exhibits that each  
21 side has provided. And this happened -- this has happened  
22 before. So until the Trust sees what exhibits you're proposing  
23 to use, it may not be able to make all of its motions in  
24 limine.

25 What I would urge you to do is -- I've given you the

1 general parameters of what I try to do -- is that, Ms. Nora and  
2 Ms. Richards, you ought to try and discuss; if you come up with  
3 proposed dates for motions in limine and for exchanging the  
4 exhibits, I'll try and accommodate that. But my goal is so  
5 that at least a week before trial you should know exactly what  
6 issues are going to be tried and what the exhibits are.

7 So I would like you to confer -- you can do it by  
8 phone obviously -- about -- and you can put it -- if you come  
9 up with an agreement, dates for motions in limine, for  
10 exchanging exhibits, et cetera, put it in a letter to me, and  
11 when we get in advance of the joint pre-trial conference, I  
12 will try the best I can to accommodate the schedule you agree  
13 on. I'd like this done as efficiently as possible, but if you  
14 don't -- Ms. Nora, if you don't know what the Trust's exhibits  
15 are, you don't know whether there's anything you want to move  
16 to exclude. And it works the other way as well.

17 Okay? So why don't the two of you confer, over the  
18 next week or so, and see if you can agree on -- having in mind  
19 that the joint pre-trial conference is on June 22nd -- what  
20 dates you would agree to exchange exhibits, file motions in  
21 limine, responses to motions in limine. I ordinarily do not  
22 hear argument on motions in limine. I usually decide them on  
23 the papers.

24 MS. NORA: Oh, okay. That was what I was sensing,  
25 Your Honor.

1 And then I don't think my note is accurate on the  
2 trial briefs. I have a note of one to two weeks, but I don't  
3 have any reference in my note. What was it; one to two weeks  
4 before --

5 THE COURT: Before the trial. Before the trial. So I  
6 will give you those dates specifically on June 22nd, but again,  
7 you can discuss with Ms. Richards; if the two of you can agree  
8 on a schedule that gets me everyth -- you know, when I say  
9 everything, the exhibits, the trial briefs, and work out a  
10 schedule for the motions in limine, I will try and accommodate.  
11 So the two of you ought to discuss it and see whether you can  
12 agree on it. Hopefully you can.

13 Okay. From the Court's standpoint, I want to have  
14 everything in my hands and the hands of my law clerks a week to  
15 two weeks before the trial so that I can review all exhibits  
16 before -- all proposed exhibits before the start of trial, I'm  
17 familiar with everything that both sides are submitting, I've  
18 read the briefs and done what research, additional research I  
19 need to do. All right. So that's my goal is to make sure that  
20 I have everything one to two weeks before. Okay?

21 Ms. Richards, any other questions you have?

22 MS. RICHARDS: None at this time, Your Honor. Thank  
23 you.

24 THE COURT: Ms. Nora, any other questions you have?

25 MS. NORA: Well, speaking of the trial briefs, Your

1 Honor, an issue arose at an earlier conference with the Court  
2 regarding punitive damages for breach of contract, and that has  
3 not been scheduled for additional briefing. Do you want briefs  
4 on Texas law with respect to punitive damages for breach of  
5 contract included in the trial brief?

6 THE COURT: If you believe you're going to seek it,  
7 you better brief it. I think this issue -- I think it was  
8 under Texas law precisely where this issue came up. And my  
9 recollection of the cases is that punitive damages is not  
10 available for breach of contract. But if you want to brief it,  
11 go ahead and brief it. I'm not ruling.

12 MS. NORA: I was only suggesting I would brief it  
13 earlier, Your Honor.

14 THE COURT: Ms. Nora, if you're going to seek it, you  
15 better brief it.

16 MS. NORA: Thank you, Your Honor.

17 THE COURT: Any other questions, Ms. Nora?

18 MS. NORA: Just again, I was trying to clarify if I  
19 should do that in the trial brief or earlier because it came up  
20 earlier. So I will get a brief to you before the pre-trial  
21 conference for --

22 THE COURT: Ms. Nora, speak with Ms. Richards and see  
23 if the two of you can agree on a schedule of when these various  
24 things will be done. Okay?

25 MS. NORA: Thank you, Your Honor.

RESIDENTIAL CAPITAL, LLC, et al.

15

1 THE COURT: Ms. Richards, anything else?

2 MS. RICHARDS: No, Your Honor.

3 THE COURT: All right. We're adjourned. Thank you  
4 very much.

5 (Whereupon these proceedings were concluded at 2:24 PM)

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C E R T I F I C A T I O N

I, Sharona Shapiro, certify that the foregoing transcript is a true and accurate record of the proceedings.

*Sharona Shapiro*

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SHARONA SHAPIRO

AAERT Certified Electronic Transcriber CET\*\*D 492

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Date: May 11, 2016



May 10, 2016

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